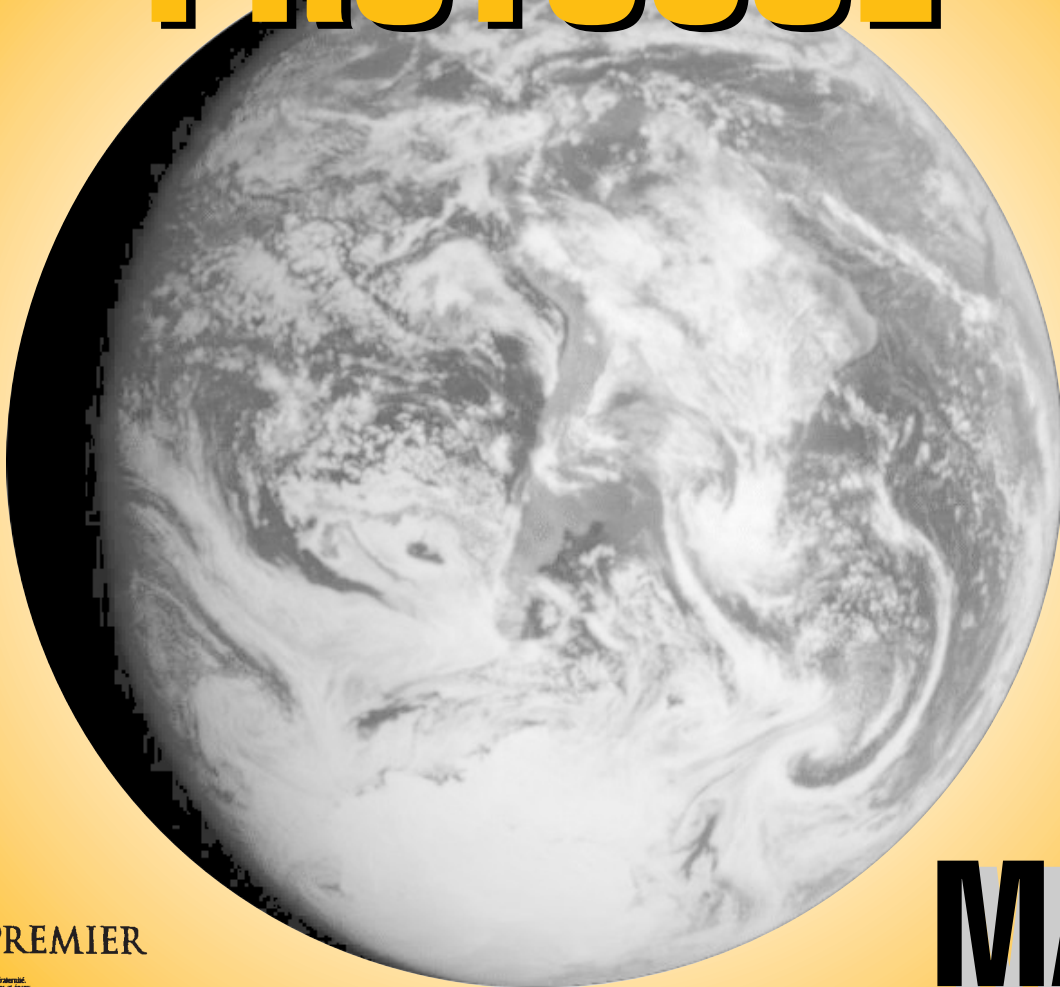



GUIDE TO THE NEW UN TRAFFICKING PROTOCOL



ARTICLE PREMIER
Dans les autres langues
en français et en anglais.

ARTICLE PREMIER

MAPP

COALITION 

*Against Trafficking
in Women*

Category II consultative status with the United Nations
Economic and Social Council



European Women's Lobby



**Protocol to prevent, suppress and punish trafficking in persons,
especially women and children, supplementing the United Nations
Convention Against Transnational Organized Crime**

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

d) “Child” shall mean any person under eighteen years of age.

GUIDE TO THE NEW UN TRAFFICKING PROTOCOL

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

by Janice G. Raymond

INTRODUCTION

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* is a wide-ranging international agreement to address the crime of trafficking in persons, especially women and children, on a transnational level. It creates a global language and legislation to define trafficking in persons, especially women and children; assist victims of trafficking; and prevent trafficking in persons. The trafficking in persons protocol also establishes the parameters of judicial cooperation and exchanges of information among countries. Although the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* anticipates accomplishing what national legislation cannot do on its own, it is also intended to jumpstart national laws and to harmonize regional legislation against the trafficking in women and children.

In December 2000, 148 countries gathered in Palermo, Italy to attend a high-level conference opening the new UN Convention Against Transnational Organized Crime to States signature. Of the 148 countries present, 121 signed the new UN *Convention Against Transnational Organized Crime*, and over 80 countries signed one of its supplementary protocols — the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. Another supplementary *Protocol Against the Smuggling of Migrants by Land, Sea and Air* was also open for States signature, and a third *Protocol on the Illicit Manufacturing of and Trafficking in Firearms* is expected to be completed at the end of 2001. The new UN Convention and its supplementary protocol on trafficking in persons have to be ratified by 40 countries before they become instruments of international law.

The Protocol promises to contest the world's organized crime networks and combat the trade in human beings and transnational prostitution. In an age of globalization of capital, information and technology, organized trafficking operates as a transnational industry not contained by national borders. The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* specifically addresses the trade in human beings for purposes of the exploitation of prostitution and other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude and the removal of organs.

NEED FOR A TRAFFICKING IN PERSONS PROTOCOL

The United Nations estimates that trafficking is a 5-7 billion U.S. dollar operation annually, with 4 million persons moved from one country to another and within countries. Numbers are always difficult to obtain, but the revenue collected from the trafficking in women and children often reveals

what the demography of trafficking cannot tell us with precision — that the numbers of trafficked women and children are appalling.

In contrast to drug and arms trafficking, the penalties for human trafficking are lower in many countries. As the traffickers have been adept at globalizing illegality, the trafficking in persons protocol is meant to globalize legality, to create penalties that fit the crime, and to promote police and judicial cooperation across borders.

Since the 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* entered into force, perpetrators have organized new and pernicious forms of trafficking such as trafficking in women and children for mail order bride industries and for sex tourism. Child sexual exploitation has grown exponentially in all countries, but especially in Asian and Latin American countries. Travel agencies, hotels, airlines, businesses, and so-called child protectors are often involved in sex tourism, playing a part in organized sex tours. Some child sexual abusers seem to think that they can avoid AIDS if they have sex with children but, more often, they seek out children because children are more pliable and can be made to fulfill the abusers demands.

Millions of women worldwide are trafficked into the sex industry. Many women who are trafficked for domestic labor end up being sexually exploited as well. It has been estimated that at least 8,000 Nigerian women have been trafficked into street prostitution in Italy. Another 5,000 Albanian, Moldovan and Ukranian women have also been made to prostitute out of rooms, apartments, small hotels, massage parlors and even exclusive clubs.

In the border areas between Thailand, Burma and Cambodia, children sold to recruiters often end up in brothels catering to international sex tourists. In Brazil, Venezuela and Colombia, traffickers abduct young girls from the streets to supply the brothels in the mining centers of Amazonia. In the brothels of the Philippines, children as young as 8-10 have been discovered whose bodies are marked by cigarette burns and sexual mutilations.

Familiar crime groups are known as the Italian Camorra, the Chinese Triads, the Russian Mafiya, and the Japanese Yakusa. The Italian Camorra operates in Italy, Spain, Germany, Brazil and other parts of Latin America. It is estimated that five thousand organized criminal groups constitute the Russia Mafiya, at least 200 having links or operations in 30 different countries. After the financial and political breakdown of the ex-Soviet Union, Russian crime gangs moved in to control the banking system, money laundering, the international movement of drugs, the weapons of the former Red army, nuclear material and prostitution. The Russian Mafiya has trafficked thousands of Nigerian women into Italy for prostitution. In order to gain legitimate residence and a base of operations in the country, hundreds of Mafiya have married

women suffering from AIDS or cancer, and other women who are vulnerable and in a state of need. The Russian Mafiya has also trafficked women into the sex industry in the United States, particularly in New York, New Jersey and California.

It would be a mistake, however, to conclude that transnational organized traffickers always operate in large syndicates. As the main *Convention Against Transnational Organized Crime* recognizes (Art.

2), an organized criminal group means a structured group of three or more persons. For example, research has shown that husbands and boyfriends of women often recruit, traffic and pimp their female partners into prostitution. They may engage a small group of friends or others to assist in the crime.

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* also addresses the human rights dimensions necessary for the protection of victims of trafficking. The Protocol recognizes the need for a combined approach that integrates the protection of human rights and assistance to victims with effective prevention, prosecution and judicial cooperation. This emphasis in the Protocol on protection and assistance to victims was highlighted during the High-level Political Signing Conference in Palermo when two Latin American countries announced that although they had signed the trafficking in persons protocol, they were not ready to sign the smuggling in migrants protocol because, in their view, this smuggling protocol did not provide the same protections as the trafficking in persons protocol.

BACKGROUND OF THE CONVENTION AND ITS SUPPLEMENTARY PROTOCOL ON TRAFFICKING IN PERSONS

In 1998 at the recommendation of the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council, the General Assembly established an intergovernmental ad hoc committee for the purpose of drafting a comprehensive international convention against transnational organized crime and three supplementary protocols (General Assembly Resolution 53/111, Dec. 9, 1998). The General Assembly requested the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to intensify its work in order to complete the final draft by the end of 2000. The Committee held 11 sessions in Vienna from January 1999 through October 2000, with over 120 countries in attendance at various meetings, along with a number of international NGOs who played a key role in the consultation process, especially in the deliberations over the trafficking in persons protocol.

The Coalition Against Trafficking in Women International (CATW), along with the Movement for the Abolition of Pornography and Prostitution (MAPP), France, the European Women's Lobby (EWL), the Association des Femmes de l'Europe Meridionale (AFEM), Article One, France and Equality Now, United States played a pivotal role in the evolution of the trafficking protocol. The Coalition Against Trafficking in Women and MAPP organized 140 NGOs into the International Human Rights Network* that was instrumental in defending a definition of trafficking that protected all victims of trafficking, not just those who could prove they had been forced. It also worked to insure specific protection mechanisms for trafficked women and children, strict and consistent measures of prosecution for traffickers, and focused on the demand aspect that had hitherto been the most invisible link in the trafficking chain. In the discussions over the *Protocol Against the Smuggling of Migrants by Land, Sea and Air*, the International Human Rights Network also highlighted the connections between the two protocols

The most controversial aspect of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* was the definition of trafficking.

on the smuggling of migrants and the trafficking in persons, and encouraged delegates to include the principle of non-refoulement in the smuggling of migrants protocol.

From the beginning of the Ad Hoc Committee's deliberations, a small group of NGOs supporting prostitution as work, and voluntary trafficking as migration for sex work, lobbied to limit the definition of trafficking to forced or coerced trafficking, to omit any mention of trafficking for prostitution or sexual exploitation, and to delete the term "victims" from the text as being too emotive. Along with countries that had legalized/regulated prostitution as labor, they worked to restrict protections for victims by limiting the definition to only those women who could prove that they had been forced into trafficking. Fortunately, the majority of countries — many of them from the less wealthy and sending countries for trafficking — wanted a definition that protected all victims of trafficking and that was not limited to force or coercion.

The Ad Hoc Committee finalized the text of the mother convention and two of its supplementary protocols in October 2000. In its resolution 55/25 of November 15, 2000, the UN General Assembly adopted the *Convention Against Transnational Organized Crime*, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, and the *Protocol Against the Smuggling of Migrants by Land, Sea and Air*. The High-level Political Signing Conference for the Convention and two protocols was held in Palermo, Italy from December 12-15, following upon the resolution of the General Assembly.

HIGHLIGHTS OF THE TRAFFICKING IN PERSONS PROTOCOL

- That trafficked persons, especially women in prostitution and child laborers, are no longer viewed as criminals but as victims of a crime
- That global trafficking will be answered with a global response. Although organized crime such as traffickers, smugglers, pimps, brothel keepers, forced labor lords, enforcers, and gangs are powerful forces, international cooperation by police, immigration authorities, social service agencies and NGOs is encouraged by this Protocol (Art. 10)
- That there is now an accepted international definition of trafficking and an agreed-upon set of prosecution, protection and prevention mechanisms on which to base national legislation against trafficking, and which can serve as a basis for harmonizing various country laws
- That all victims of trafficking in persons are protected, not just those who can prove force (Art. 3a and b)
- That the consent of a victim of trafficking is irrelevant (Art. 3b)
- That the definition provides a comprehensive coverage of criminal means by which trafficking takes place, including not only force, coercion, abduction, deception or abuse of power, but also less explicit means, such as *abuse of a victim's vulnerability* (Art 3a)
- That this new international definition of trafficking helps insure that victims of trafficking will not bear the burden of proof (Art 3b)

- That the exploitation of prostitution and trafficking cannot be separated. The Protocol acknowledges that much trafficking is for the purpose of prostitution and for other forms of sexual exploitation (Art 3a)
- That it is not necessary for a victim to cross a border so that women and children who are domestically trafficked for prostitution and forced labor within their own countries, are also protected subject to provisions listed in Article 3 of the main Convention
- That the key element in the trafficking process is the exploitative purpose, rather than the movement across a border (Art. 3a)
- That this Protocol is the first UN instrument to address the demand which results in women and children being trafficked, calling upon countries to take or strengthen legislative or other measures to discourage this demand that fosters all forms of exploitation of women and children (Art. 9.5)♦

LESSONS FROM THE VIENNA PROCESS

There is a governmental and non-governmental battle being waged over how the very realities of prostitution and trafficking will be defined.

Some governments and a vocal number of well-financed NGOs want to separate trafficking from prostitution to avoid addressing the contentious issue of legalization/regulation of prostitution as an economic and labor sector. Countries such as Holland and Germany that have legalized prostitution, removed laws against pimping, and who virtually live off the earnings of women in prostitution have an enormous investment in the sex industry. They see abuse or exploitation of women in the sex industry as accidental, not integral, to the prostitution, as if the harm to women is random, incidental or the chance behavior of a bad pimp or buyer.

In this line of reasoning and policy, the solution becomes one of, on the surface, regulating the pimp s or customer s behavior. In reality, customers in legalized/regulated brothels defy these regulations all the time. Rather than addressing the fundamental legitimacy of the sex industry and its system of prostitution, some governments implement regressive and reductionistic measures of behavior control and modification that most often fail, such as required condom use.

These measures do not address the structural inequities of why, more that 50 years after the Universal Declaration of Human Rights and the 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, a class of women can be legally segregated from

♦ Although there were some provisions exacted from a compromise, especially by countries that legalize/regulate prostitution, these points were placed in the travaux préparatoires (notes that will be used in interpreting the Protocol), and not in the text of the Protocol itself. These notes include a reference that the phrase abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved. Another note indicates that The Protocol is without prejudice to how States Parties address prostitution in their respective domestic laws.

society to be used as instruments of male pleasure and sexual commodities.

Statements issued by UN agencies and special rapporteurs during the Vienna process supported the de-linking of prostitution and trafficking. In her position paper dated May 20, 1999 submitted to the Ad Hoc Committee, the UN Special Rapporteur on Violence Against Women argued that the terms victims and sexual exploitation should not be included in the Protocol and questioned whether all activities in the sex industry constitute sexual exploitation per se, or whether only sex work under exploitative or slavery-like conditions could qualify as sexual exploitation. The statements of the UN Special Rapporteur on Violence Against Women were remarkably similar in content and language to those issued by the pro- sex work NGOs during the Vienna process.

There is a bias in some UN agencies and circles in favor of redefining prostitution as work and limiting the problem of trafficking to selected forms of trafficking. UN documents exhibit this bias when they use terms such as “sex work” or “sex workers” instead of “prostitution” or “women in prostitution,” or when they address only “forced prostitution” as the problem. Some may think that this language destigmatizes and dignifies women in prostitution when, in reality, what it dignifies is the sex industry. It lays the groundwork for recognizing buyers of commercial sex as legitimate “customers” and pimps as “third party business agents or brokers.”

Both the UN Special Rapporteur on Violence Against Women and the UN High Commissioner for Human Rights supported a definition of trafficking that was based only on force or slavery-like conditions and which omitted any mention that the consent of the victim is irrelevant. The High Commissioner for Human Rights, in her June 1, 1999 Informal Note to the delegates, also favored deleting the term sexual exploitation to avoid the implementation difficulties inherently associated with undefined, imprecise and emotive terms such as sexual exploitation when used in connection with adults. The International Labor Organization also proposed deleting any reference in the Protocol to the term, sexual exploitation.

Fortunately, other UN bodies urged the Ad Hoc Committee in Vienna to draft a definition of trafficking in the new protocol that protected all victims of trafficking. The August 15, 2000 Report on Contemporary Forms of Slavery issued by the Working Group on Contemporary Forms of Slavery and reaffirmed by the Sub-Commission on the Promotion and Protection of Human Rights strongly recommended that the Protocol not be limited to forced or coerced trafficking but include all trafficking, irrespective of the consent of the victim. The Working Group explicitly noted with concern that in her most recent report (E/CN.4/2000/68, para.13) the Special Rapporteur on violence against women, offers a definition of trafficking that is inconsistent with the principles of the 1949 Convention.

Many governmental delegations at various points in the Vienna meetings supported a human rights definition of trafficking granting victims maximum protection of their basic rights and demanding full prosecution of traffickers among them, Argentina, Mexico, Venezuela, Columbia, China, Egypt, the United Arab Emirates, Syria, Algeria, Bangladesh, Pakistan, India, and Burkina-Faso. From the beginning of the Vienna process, many delegations supported an inclusive and principled definition of trafficking and argued for all victims to be protected, among them, Belgium,

the Philippines, the Holy See, Cuba, France, Norway, Finland, Morocco, Togo, and Madagascar. Sweden, in the final session, offered a definition of trafficking that helped effect consensus.

In general, it was wealthy western and other industrialized countries — many of them receiving countries for victims of trafficking — who supported many of the provisions called for by the pro-sex work NGOs. These countries, including Holland, Germany, Denmark, Switzerland, Ireland, Australia, New Zealand, Japan, Thailand, Spain, Canada, and the U.K., all offered various reasons for their positions. The United States initially argued that the terms *inducement* and *irrespective of the consent of the person* were vague and raised points of confusion for both ratification and implementation, but nonetheless indicated that they would be prepared to support a consensus definition.

WHAT NEEDS TO BE DONE

1. Monitor Interpretation of the UN Protocol Against Trafficking in Persons - Although we have a new UN anti-trafficking Protocol, we must work to insure that it is interpreted correctly and that it is used as a basis for new national, regional and multi-regional legislation.

For example, the Global Alliance Against Trafficking in Women (GAATW) in conjunction with the International Human Rights Law Group states on its web page that *If a government insists on using language such as sexual exploitation, we should encourage them to use the following definition [suggested by the NGO] so that sexual exploitation, like any other form of labor exploitation, requires the use of force or coercion*. This message is in direct contradiction to the definition in the Protocol which states that trafficking for the exploitation of prostitution and other forms of sexual exploitation can occur not only under conditions of force or coercion but through abuse of a victim's vulnerability. Clearly, the pro-sex work lobby is resorting to blatant misinterpretation of the actual trafficking protocol in the aftermath of having lost a key international battle over the definition of trafficking.

Unfortunately, there are some governments and NGOs who want only to emphasize the provisions of the Protocol that suit them and who still focus only on forced trafficking. They misrepresent the fact that trafficking can occur with or without the consent of the victim and that this is now a point of UN policy and legislation on trafficking. They recommend that only part of the definition of trafficking – that which emphasizes force or coercion – be used in crafting national and regional legislation.

2. Address the growing trend to separate prostitution and trafficking.

The trend to minimize prostitution, and now even *trafficking* for prostitution, has been growing for years. Particularly in policy circles where anti-trafficking legislation is being discussed and debated, legislators and NGOs are being told to concentrate only on trafficking and not on prostitution. And when trafficking is the subject, they are told to focus on trafficking for domestic labor. Unfortunately, prostitution has been wiped off the agenda in many countries. Whenever anti-trafficking legislation is discussed in inter-regional or international forums, countries are told not to discuss prostitution else it will jeopardize agreements against trafficking. Sadly, policy makers have caved in to this censorship.

The same violence, exploitation and health consequences happen to women who are in local prostitution, many of whom have been domestically trafficked from neighborhood to neighborhood, city to city, state to state and province to province?

Trafficking and sexual exploitation are intrinsically connected and should not be separated merely because there are other forms of trafficking; or because some countries have legalized/regulated prostitution and thereby want to censor any discussion of prostitution from regional and international policy agendas.

Information collected from victims of trafficking and prostitution, and from others involved in work against sexual exploitation — such as social services providers, human rights advocates, and law enforcement authorities — verifies that a significant number of *both* women who have been internationally trafficked, as well as those who have been domestically trafficked and who are in local prostitution industries, endure similar kinds of violence and suffer similar and multiple health effects from the violence and sexual exploitation. We cannot separate the exploitation done to women in local prostitution industries from the exploitation done to women who have been trafficked for prostitution.

3. Put back prostitution on the policy agenda - In countries that tolerate prostitution — as one commentator noted — there are more brothels than schools. Do we really want brothels everywhere? Is prostitution a career to which we want young girls to aspire?

NGOs and governments need to put prostitution back on the legislative policy agenda, particularly as many countries in Europe and the new independent states are rushing to redefine prostitution as legal work in the misguided attempt to regulate and control what they allege are the abuses of prostitution without recognizing that the system of prostitution itself is the abuse.

Countries that have legalized or regulated prostitution are those into which the highest numbers of foreign women are being trafficked. There is good evidence that countries such as Holland and Germany, both of which have recognized prostitution as work and as an economic sector, are precisely the countries that experience higher rates of women illegally trafficked into the country for prostitution. For example, a report done for the Budapest Group found that 80% of the women in the brothels in the Netherlands are from other countries — most of them recruited and trafficked to Holland. Claims that legalizing and regulating prostitution lessens violence against women in prostitution and improves the health of women in the sex industry are unproven and need to be scrupulously examined.

We are facing a public policy crisis over legalization/regulation of prostitution. Governments which have rejected this false solution of legalization and chosen to address prostitution as a violation of women's human rights are in a key position to create forums and model regional legislation in which prostitution is put back on the policy agenda.

4. Combat the trend to legalize/regulate prostitution as work. We cannot redefine women in prostitution as sex workers, without redefining the whole industry as accepted work, thereby redefining pimps as third party business managers.

Legalization/regulation of the sex industry doesn't address its primary consequence — that women in prostitution are *segregated* as a legal class whose occupation is to provide sexual services to men — albeit under regulated conditions but letting the male demand for commodification of women's bodies stand.

Decriminalize women who are in prostitution. Penalize the recruiters, pimps, procurers, brothel-keepers, and buyers.

5. Penalize the buyers. The least discussed part of the prostitution and trafficking chain has been the men who buy women for sexual exploitation in prostitution, pornography, sex tourism and mail order bride marketing. We cannot shrug our shoulders and say men are like this, or prostitution has always been in existence, or boys will be boys, or customers are victims too. We cannot tell women and girls in prostitution that they must continue to do what they do because prostitution is inevitable. Rather, our responsibility is to make men change their behavior by all means available — educational, cultural, and through legislation that penalizes men for the crime of sexual exploitation.

Sweden's law against the buying of sexual services has been a model that should be emulated elsewhere. There is an urgent need for governments to put male buyers of women and children in prostitution on the policy and legislative agenda, taking seriously that the problem of global sex trafficking will not be dented unless those who create the demand for prostitution are addressed.

6. Do not treat trafficked women as migration criminals — i.e., as illegal migrants who should be deported from a country. Trafficking should not be treated as a migration crime. Many regard trafficked women as undesirable and criminal aliens, crossing borders illegally to take advantage of greener pastures elsewhere. This perspective is reflected in national legislation in destination countries that makes immigration more restrictive, thus obstructing the flow of migrants seeking to enter countries legitimately and through applications for asylum.

Trafficking is exploited migration, but trafficked women are not migration criminals.

Ironically, these restrictive immigration policies tighten up border controls that often are used to harass vulnerable migrants, but have little effect on the traffickers. As immigration becomes more restrictive and discriminatory, and ineffective border controls are utilized in receiving countries, traffickers become the major international players who facilitate international migration because the legitimate channels are so restrictive. Many would-be immigrants turn to the smugglers, who are often the traffickers who then channel numbers of women and children into global trafficking networks that supply local sex industries and cheap labor markets in countries of destination.

8. Fund women s groups who oppose trafficking and prostitution - It is important that governments who do not support the legalization of prostitution fund women s NGOs in developing countries, and countries in financial and political crisis, so that projects promoting gender equality are not beholden to countries that have legalized the system of prostitution. Governments, which have legalized and regulated prostitution, such as Holland, are funding enormous numbers of human rights NGOs and direct service projects against violence against women, including many organizations that work with trafficked and prostituted women. Many direct service NGOs who are receiving funding from the pro- sex work countries have stated that they cannot take a position against legalization/regulation for fear of losing funding when they know, from direct experience with the harm to women in prostitution, that legalization/ regulation is not the answer.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children follows in the footsteps of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child. This protocol on trafficking in persons is placed firmly in the body of international instruments, and takes up where the others left off in protecting the basic human rights of women and children.

International treaties alone are not sufficient to combat the crime of trafficking in women and children. But the anti-trafficking protocol is a huge step forward in advancing the human rights of women and children into the 21st century.

**International Human Rights Network*

Réseau International Des Droits Humains

La Red Internacional De Derechos Humanos

AFRICA :

International Council of Women ; **Mali ; Ghana, Togo, Congo, Brazzaville, Cote d'Ivoire, Burkina Faso, Senegal** - Coalition Against Trafficking in Women, Africa/ Coalition Contre le Trafic des Femmes, Afrique ; **Mali** - Association pour le Progrès et la Défense des Droits des Femmes Maliennes

ASIA AND AUSTRALIA:

International Council of Women ; **Australia, Bangladesh, Indonesia, Japan, Nepal, Pakistan, the Philippines, Thailand** - Coalition Against Trafficking in Women, Asia-Pacific ; **India, Japan, the Philippines, Vietnam** : International Voluntary Organisation for the Promotion of Socially at Risk Young People and Women – VIDES ; **Australia** - Project Respect, Inc. ; **Bangladesh** - Ain-O-Unnayan Sangstha and the Institute for Law and Development (ILD) ; Bangladeshi National Women's Lawyers Association ; **India** – Prerana ; Network Against Commercial Sexual Exploitation & Trafficking (NACSET), a network of 253 anti-trafficking NGOs ; **Indonesia** - Rifka Anissa Women's Center ; **Nepal** – National Network Group Against Girl Trafficking ; Community Action Center ; **Pakistan** – Lawyers for Human Rights and Legal Aid (LHRLA) ; **Philippines** - Third World Movement Against Exploitation (TW-MAE); Women's Crisis Center ; BIDLISIW ; Buklod Center ; BUKAL ; DAWN ; EBGAN ; Ima Foundation ; Kakampipi ; Lawig Bubai ; Talikala Foundation ; Theatrang Walang Bakod (Theatre Without Borders) ; WEDPRO ; WomanHealth

EUROPE:

European Women's Lobby ; Pax Romana ICMICA-IMCS (International Catholic Movement for Intellectual and Cultural Affairs) ; International Council of Women ; **Belgium, France, Greece, Norway, Spain, Sweden** - Coalition Against Trafficking in Women ; **Austria, Belgium, Denmark, France, U.K.** - International Abolitionist Federation ; **Austria, Belgium, France, Germany, Hungary, Ireland, Poland, Portugal** - International Voluntary Organisation for the Promotion of Socially at Risk Young People and Women – VIDES ; **France, Greece, Italy, Portugal, Spain** - Association des Femmes de l'Europe Méridionale (AFEM) ; **Albania** – Le Groupe Albanais des Femmes Journalistes ; **Finland** – Network North ; **France** - Article Premier (Network of 24 French Human Rights NGOs); Association Nationale de Readaptation Sociale (ANRS) ; Collectif féministe Contre le Viol ; Comité Permanent de Liaison des Associations Abolitionnistes (CPL) ; Coordination Française pour le Lobby Européen des Femmes (CLEF) ; Equipe d'Action Contre le Proxénétisme (EACP) ; Fondation Scelles ; Mouvement National le Cri ; Movement for the Abolition of Prostitution and Pornography, MAPP ; Union Against Trafficking in Human Beings ; **Greece** - Greek League for Women's Rights ; National Council of Greek Women ; Non-Aligned Women's Movement ; AFEM ; **Ireland** – National Council of Irish Women (NWCi – 300,000 Irish Women) ; **Italy** - Confederacion Mundial de Exalumnas de las Hijas de Maria Auxiliadora CMEFMA ; WIN (Women's International Network) Emergency and Solidarity ; **Norway** - Feminist Group Otta ; FOKUS (Forum for Women and Development) ; Kvinnefronten/Women's Front; Network North ; **Portugal** – AFEM (Association des Femmes de l'Europe ; **Russia** - Network North ; **Spain** - AFEM ; Asociacion Juvenil Madreselva ONGD Madreselva ; Instituto de Derechos Humanos Pedro Arrupe-IDHPA ; Investigacion de Malos Tratos a Mujeres ; Auxiliadoras del Buen Pastor « Villa Teresita » ; IPSSE ; Ayuntamiento de Sevilla – Delegacion de la Mujer ; Sapibe ONG ; Forum de Mujeres Periodistas del Mediterraneo ; **Sweden** – ROKS ; **Ukraine** – DANA ; U.K. - Pacific-Asian Migrants Information Network (PAMIN) ; National Alliance of Women's Organisations (NAWO) ;

LATIN AMERICA AND THE CARIBBEAN :

International Council of Women ; **Argentina, Brazil, Chile, Columbia, Dominican Republic, Ecuador, Puerto Rico, Venezuela** - La Coalicion Contra el Trafico de Mujeres, America Latina ; **Brazil, Mexico**:- International Voluntary Organisation for the Promotion of Socially at Risk Young People and Women – VIDES ; **Argentina** - Accion Solidaria en Salud, Asamblea Raquel Liberman; Asociacion Abuelas Plaza de Mayo Mar del Plata; Catolicas por el Derecho a Decidir; Centro de Apoyo a la Mujer Maltratada (C.A.M.M.); Centro de Educacion, Terapia e Investigacion en Sexualidad (C.E.T.I.S.) ; Centro de Encuentro Cultura y Mujer CECYN ; Centro de Estudios Interdisciplinarios sobre las Mujeres (CEIM) ; Centro Feminista Latinoamericano de Estudios Interdisciplinarios (CELEIN) ; Centro para Los Nuevos Roles (CENUR); CLADEM (Comite Latinoamericano y del Caribe para la defensa de los derechos de la Mujer); Freedom Project; Gays y Lesbianas por los Derechos Civiles (GayLesD.C) ; Instituto Social y Politico de la Mujer ISPM ; Mujeres al Oeste ; Red Nacional por la Salud de la Mujer ; Puerta Abierta ; **Chile** – CERSO ; Red Nacional por la Salud de la Mujer ; **Cuba** – Federacion de Mujeres Cubanas (Federation of Cuban Women) ; **Dominican Republic** - M.A.I.S. Movimiento para el Autodesarrollo Internacional de la Solidaridad ; **Mexico** - Defensoras Populares, A.C. (DPAC) ; **Peru** - Centro de Apoyo a la mujer ‘Agustina Rivas’ o Centro AMAR ; CLADEM (Comite Latinoamericano y del Caribe para la defensa de los derechos de la Mujer) ; **Puerto Rico** - Taller Salud ; **Venezuela** - Asociacion Civil Buen Pastor; Asociacion Venezolana de Educacion Catolica (AVEC) ; Circulos Femeninos Populares (C.F.P.) ; Congregacion Hermanas Adoratrices ; Federacion Venezolana de Abogadas FEVA ; Investigacion Difusion Economico Laboral para Latinoamerica (IDELL) ; SALUDARTE; Congregacion Oblatas del Santisimo Redentor ; Unidad de Apoyo Legal Nacional de ASOCLIVA ;

MIDDLE EAST:

International Council of Women ; Israel - SHANI; Awareness ;

NORTH AMERICA:

Canada –Canadian Association of Elizabeth Fry Societies (CAEFS) ; Canadian Association of Sexual Assault Centres (CASAC) ; Coalition Against Trafficking in Women ; International Council of Women ; Vancouver Rape Relief and Women’s Shelter ; **United States**– Center for Responsible Tourism; Center of Research and Action for Peace; Coalition Against Trafficking in Women ; Congregation of the Sisters of the Good Shepherd ; East Asia-US Women’s Network Against Militarism ; Equality Now; Feminist Majority ; Institute on Women and Technology; International Council of Women; International Voluntary Organisation for the Promotion of Socially at Risk Young People and Women – VIDES ; Marist Sisters, International ; National Organization for Women (NOW) ; Prostitution Research and Education ; Resources for Anti-Violence Network (RAVN) ; Sisterhood is Global Institute; Sisters of Loretto ; Soroptimists International; Training in Communication (TIC) ; Western Mindanao State University Women’s Research and Resource Center ; World Association of Girl Guides and Girl Scouts; World Federation for Mental Health

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3
Use of terms

For the purposes of this Protocol:

(a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) Child shall mean any person under eighteen years of age.

Article 4
Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5
Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6
Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11 *Border measures*

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12 *Security and control of documents*

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13 Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14 *Saving clause*

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention ⁴ and the 1967 Protocol ⁵ relating to the Status of Refugees and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15 *Settlement of disputes*

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16 *Signature, ratification, acceptance, approval and accession*

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17
Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18
Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19
Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

We must work

to insure that commercial sexual exploitation is actionable, both when it happens to women who have been trafficked into a country and when it happens to women within a country.

The Protocol affirms

that it is the exploitation, not the transport of a victim that matters.

2001

Order from:

Coalition Against Trafficking in Women

P.O. Box 9338 • North Amherst, MA 01059 • USA • Fax: (413) 367-9262